

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PHL VARIABLE INSURANCE  
COMPANY,

Plaintiff,

v.

THE EDWIN FULD LIFE INSURANCE  
TRUST, by and through its trustee,  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB

Defendant.

Civil Action No. 1:12-CV- 00313 - RGA

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**ORDER**

This 20<sup>th</sup> day of February 2013, upon consideration of Defendant's Motion to Dismiss

(D.I. 10), IT IS HEREBY ORDERED that the Motion to Dismiss is **DENIED**.<sup>1</sup>

  
United States District Judge

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<sup>1</sup> The Motion to Dismiss is in response to the request for relief in the Plaintiff's Complaint that it be allowed to keep the premiums paid for the insurance. Defendant asserts that it is unclear which state's law applies substantively. (D.I. 15, p.5). If Florida law applies, and the allegations of the Complaint are proven, the life insurance contract was void. If so, Florida law further provides that the Plaintiff may be able to retain the premiums. *See TTSI Irrevocable Trust v. Reliastar Life Ins. Co.*, 60 So.3d 1148, 1150-51 (Fla. Dist. Ct. App. 2011). Thus, even if the three-year Delaware statute of limitations for bringing a fraud-based claim applies, *see* 10 Del. Code § 8106, it may be the case that under Florida law Plaintiff will be able to keep the premiums if the contract is found to be void.